

**UNITED STATES DISTRICT COURT MIDDLE
DISTRICT OF TENNESSEE AT NASHVILLE**

**UNIVERSAL TECHNOLOGIES,
INC., and JESSE E. ROGERS,**

Plaintiffs,

VS.

FAYE CLEEK, et al.,

Defendants.

Case No.: 2:14-cv-00091

Judge Sharpe

Magistrate Judge Brown

JURY DEMAND

PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIMS OF FAYE CLEEK

Come now Plaintiffs/Counter Defendant/Nominal Defendant, Universal Technologies, Inc., and Jesse E. Rogers, and moves this Court for an Order dismissing Counterclaims of Faye Cleek. The Motion to Dismiss is predicated upon the following grounds:

- (1) Cleek's breach of contract claim acknowledges that she does not hold and has never held any shares of UTI stock which is consistent with UTI's corporate tax filings listing Mr. Rogers as owning "100.00%" of UTI's stock. See (DE 22, Counter Complaint, ¶¶ 5 & 14) ("Mr. Rogers has breached his contract by failing to convey the 25% ownership interest in UTI to [Cleek]").
- (2) Cleek's breach of contract claim is barred by the statute of limitations as the alleged promise to convey shares of UTI stock, set forth only in documents forged by Cleek, purportedly occurred in 1998. See Tenn. Code Ann. § 28-3-109(a)(3) ("shall be commenced within six (6) years");
- (3) The derivative action and breach of fiduciary claims are frivolous, vexation and premised upon a forged and backdated minute book entry examined by two (2) experts;
- (4) Cleek lacks standing to bring a derivative action or breach of fiduciary claim because Cleek does not hold and has never held any shares of UTI stock. See Tenn. Code Ann. § 48-17-401 ("A person may not commence . . . unless the person was a shareholder of the corporation when the transaction complained of occurred . . .").

Accordingly, Cleek's counterclaims for breach of contract, breach of fiduciary and derivative action are devoid of merit and should be dismissed and/or fail to state a claim upon which relief may be granted pursuant to Fed.R.Civ.P. 12(b)(6). The reasons for granting this Motion to Dismiss Counterclaims of Cleek are more fully set forth in the Memorandum being filed contemporaneously herewith.

Respectfully Submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by ECF on all counsel of record by electronic means via CM/ECF of the District Court for the Middle District of Tennessee.

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